

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: OFFICE OF CONSUMER ADVOCATE, Complainant, vs. USA VOICEMAIL SERVICE, Respondent.	DOCKET NO. FCU-04-65
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**ORDER DOCKETING FOR FORMAL PROCEEDING AND
SETTING DEADLINE FOR RESPONSE**

(Issued February 1, 2005)

On December 28, 2004, pursuant to Iowa Code §§ 476.103 and 476.3, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed with the Utilities Board (Board) a petition for a proceeding to consider a civil penalty for an alleged cramming violation committed by USA Voicemail Service (USA Voicemail). Based upon the record assembled in the informal complaint proceedings, the events to date can be summarized as follows:

On November 5, 2004, Curtis McClurg of North Liberty, Iowa, submitted a complaint to the Board disputing charges on his local telephone bill for what appeared to be voice mail service. Mr. McClurg stated that he did not receive an offer for voice mail and did not sign up for voice mail.

Through correspondence with Mr. McClurg's local telephone service provider and OAN Services, Inc., a company identified on Mr. McClurg's bill, Board staff

learned the disputed charges were submitted on behalf of USA Voicemail. Board staff identified the matter as C-04-250 and, pursuant to Board rules, on November 30, 2004, forwarded the complaint to USA Voicemail for response within ten days.

The Board received USA Voicemail's response on December 6, 2004. USA Voicemail stated the account was opened through an on-line application on August 18, 2004, the account was canceled on December 12, 2004, and that charges of \$51.80 had been credited. USA Voicemail attached a copy of what it said was the application.

On December 21, 2004, Board staff issued a proposed resolution concluding that USA Voicemail had not provided sufficient proof of authorization to charge Mr. McClurg. Staff explained that it could not determine if information on USA Voicemail's web page was enough to clearly indicate what Mr. McClurg was signing up for. Staff noted that USA Voicemail had provided a full credit and was prohibited from pursuing collection action in relation to the charges.

On December 28, 2004, USA Voicemail provided Board staff with additional information stating that during a survey, Mr. McClurg had requested \$1,000 in grocery coupons with voice mail service. USA Voicemail attached a copy of a web page sample containing language disclosing the cost of the voice mail service.

On December 29, 2004, Board staff stated in a letter to USA Voicemail that the proposed resolution concluding that USA Voicemail had committed a cramming violation would not change as a result of the additional information.

In its December 28, 2004, petition, Consumer Advocate asserts that the proposed resolution should be augmented with a civil penalty because credits alone will not stop the unlawful practice and that civil penalties are necessary to ensure compliance and deter future violations. USA Voicemail has not responded to Consumer Advocate's petition.

The Board has reviewed the record to date and finds there is sufficient information to warrant further investigation into this matter. The Board will delay establishing a procedural schedule and allow USA Voicemail an opportunity to respond to the allegations raised in Consumer Advocate's petition.

IT IS THEREFORE ORDERED:

1. The "Petition for Proceeding to Consider Civil Penalty" filed by the Consumer Advocate Division of the Department of Justice on December 28, 2004, is granted. File C-04-250 is docketed for formal proceedings, identified as Docket No. FCU-04-65.

2. USA Voicemail Service is directed to file a response to Consumer Advocate's petition on or before March 2, 2005.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 1st day of February, 2005.